IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.348/2003

1. Shri Balkrishna S.S. Kakodkar,
landlord, and his wife,

2. Smt. Ramabai B.S. Kakodkar,
housewife, both
resident of F-1, Vrindavan,
Bepquegale, Curchorem, Goa. .... Petitioners.

V/s.

Shri Rama Babal Vasta,
Vastawada, Curchorem, Goa. .... Respondent.

Mr. R.G. Ramani, Advocate for the petitioners.

Respondent though served, absent.

CORAM : N.N. MHATRE, J.

DATE : JANUARY 29, 2004.

ORAL JUDGMENT :

The short question involved in the present petition is whether a document could be produced before the Court, in evidence, if the same has not been annexed to the affidavit which forms part of the examination-in-Chief before a Court ?

2. The petitioners have instituted Regular Civil Suit No.210/2000 in the Court of the Civil Judge, Sr. Division at Quepem for the reliefs of mandatory injunction and permanent injunction. An application for temporary injunction was also filed. An affidavit was

filed by the petitioner No.1 stating that the copies of the documents relied on by the petitioners were delivered to the respondent. This affidavit was filed on 21.5.1998. One of the documents which was delivered to the respondent was a copy of the construction licence. Written statement was filed on 20.6.1999 by the respondent. In accordance with the C.P.C., the petitioners filed affidavit-in-evidence of their first witness along with certain documents. This affidavit was filed on 17.12.2002. Although a reference was made to the construction licence in para 19 of the affidavit, the construction licence was not filed along with the affidavit. On the same day, the petitioners made an application under Order 13, Rule 10, read with Section 151 of the C.P.C. calling for the records of Regular Civil Suit No. 35/97/B from the Court of the Civil Judge, Sr. Division Quepem as the original of the construction licence was produced in those proceedings. This application was allowed. On 23.1.2003, the first witness of the petitioners was being examined and certain documents of the petitioners were sought to be exhibited, the petitioners sought to exhibit the construction licence which was then available in Regular Civil Suit No.35/97/B before the Court. However, on 3.3.2003, the respondent objected to the petitioners' producing the construction licence as it was not filed along with the

affidavit-in-evidence. On 27.3.2003, the trial Court rejected the application made by the petitioners and disallowed the production of the construction licence on the ground that Order 18, Rule 4(1) of C.P.C. permits a party to rely upon only such documents as are filed along with the affidavit. The Court has, therefore, held that any document which has not been filed along with the affidavit cannot be taken on record and marked as an exhibit.

2. Although the respondent has been served, no body appears for them today. Order 18, Rule 4 makes it clear that while recording the evidence, the witness shall file an affidavit, produce copies of documents which ought to be supplied to the opposite party. If such documents are filed and parties rely upon the documents, the proof and admissibility of such documents which are filed along with the affidavit shall be subject to the orders of the Court. This provision of law cannot be construed to mean that those documents which are not produced along with the affidavit as examination-in-chief cannot be relied on by a party. No doubt admissibility or otherwise of such a document will always be subject to the orders of the Court. However, to disallow the production itself would, in my view, be incorrect.

3. In any event, the object of this provision is to make the opponent aware of the documents sought to be relied on by a party producing such documents. Undisputedly, the construction licence was referred to in the plaint as well as in the affidavit-in-evidence. A copy of the same was supplied to the respondent even prior to their filing the written statement. Therefore, no prejudice would have been caused if the petitioner had been allowed to exhibit the construction licence when produced in the Court. Order 7, Rule 14, in any event, permits production of documents as long as they are entered in list and are produced by the plaintiff when the plaint is presented by him and shall be at the same time delivered a copy to the defendant. There is no doubt that a copy of the document has been delivered to the respondent and, therefore, the view taken by the trial Court is hypertechnical and is required to be set aside.

4. The impugned order is set aside. Rule is made absolute in terms of prayer (i).

NISHITA MHATRE, J.

ssm.